

**MAR 20 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MICHAEL DARREN ISHAM,

Petitioner - Appellant,

v.

E. K. MCDANIEL, Warden,

Respondent - Appellee.

No. 03-17267

D.C. No. CV-00-00280-ECR/VPC

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Edward C. Reed Jr., District Judge, Presiding

Submitted March 14, 2006<sup>\*\*</sup>  
San Francisco, California

Before: GOODWIN, REINHARDT, and HAWKINS, Circuit Judges.

Michael Darren Isham (“Isham”) seeks habeas relief, claiming insufficient evidence to support his conviction and ineffective assistance of counsel. We affirm the district court’s denial of relief.

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The government presented sufficient evidence from which a rational juror could find Isham guilty of attempted murder. In Nevada, firing a gun at another person is ordinarily sufficient evidence of attempted murder. See Reibel v. State, 106 Nev. 258, 260 (1990). The three police officers who pursued Isham testified that the man seated in the passenger side of a Mercury Cougar, later identified as Isham, fired four to six shots at Sergeant Allamshaw. Both of the codefendants confirmed that Isham leaned out the car window and fired at least one shot. Further, two of the police officers testified that after shooting at Allamshaw, Isham fired one or two shots in their direction.

Isham's ineffective assistance of counsel claim, based on his counsel's failure to object to a reasonable doubt jury instruction, also fails. This court has twice held the Nevada jury instruction defining reasonable doubt to be constitutional. See Ramirez v. Hatcher, 136 F.3d 1209, 1211-15 (9th Cir. 1998). Because any objection would have been meritless, Isham cannot demonstrate prejudice.

**AFFIRMED.**